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Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

**THE SIERRA CLUB and ENVIRONMENTAL
INTEGRITY PROJECT,**

Plaintiffs,

vs.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,**

Defendant.

Case No. C-11-0846-MEJ

**JOINT MOTION TO EXTEND THE
SUMMARY JUDGMENT REPLY BRIEF
DEADLINE; DECLARATION OF
COUNSEL; ~~[PROPOSED]~~ ORDER**

Pursuant to this Court's Order granting Plaintiffs' Unopposed Motion To Extend The Summary Judgment Reply Brief Deadline, Dkt. 40, Plaintiffs' summary judgment reply brief is due today, May 1, 2012. Pursuant to Federal Rule of Civil Procedure 6(b), all Parties now move for a modest enlargement of time until Friday, May 4, 2012, in which Plaintiffs are to file their summary judgment reply brief. This motion is supported by the Declaration of Counsel incorporated into this document. *Infra*.

A district court's decision regarding an extension of time lies well within its discretion. *United States ex rel. Hawaiian Rock Prods. Corp. v. A.E. Lopez Enters.*, 74 F.3d 972, 976 (9th Cir.1996) (estab-

lishing that such a decision will not be disturbed absent an abuse of discretion).

For the following reasons, the all Parties assert good cause exists to grant this request for an enlargement of time.

1. By email with a date/time stamp of 10:04 am, May 1, 2012, Plaintiffs' counsel David Bahr, received notice from plaintiff Sierra Club, that it had received a large volume of records released by EPA in response to the FOIA request that is the subject of this suit.
2. Plaintiffs' counsel had been entirely unaware that this release was pending.
3. In a telephone conversation with Mr. Bahr, EPA's trial counsel, Abraham Simmons, stated that he was similarly unaware that this release was pending.
4. Based on counsels' initial review of the EPA's cover letter and a declaration of a Luminant employee, it appears that this release constitutes 183 pdf files totaling approximately 6,000 pages of material.
5. Based on counsels' initial review of the EPA's cover letter and a declaration of a Luminant employee, it appears that the information in at least some of these documents is responsive to claims and defenses asserted by the Parties in this case.
6. The Parties require a brief period to evaluate the contents of the recently released records and Plaintiffs require time in which to evaluate their relevance to arguments to be presented in their summary judgment reply.
7. This request will not unreasonably delay final disposition of this case. The summary judgment argument date was recently continued by a week until May 17, 2012. Dkt. # 38.
8. No party will be disadvantaged by this enlargement of time. If this motion is granted, with the recent continuance of the argument date, the parties and the Court will actu-

ally have same amount of time between the filing of the reply brief and the hearing as under the schedule previously approved by the Court, dkt. # 31, (13 days).

9. This is the Parties' first joint request for an enlargement of time in which to brief summary judgment in this case.

10. This request for enlargement is made in good faith and for no improper purpose.

WHEREFORE, the Parties respectfully request the Court to enlarge Plaintiffs' time to file their summary judgment reply brief until May 4, 2012.

Respectfully submitted for the Court's consideration, this 1st day of May, 2012.

s/ David Bahr

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s/ Abraham A. Simmons

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DECLARATION OF COUNSEL

1. My name is David Bahr. I am Plaintiffs' lead counsel in this case. This declaration is based on my personal knowledge and experience.

2. By email with a date/time stamp of 10:04 am, May 1, 2012, I received notice from plaintiff Sierra Club, that it had received a large volume of records released by EPA in response to the FOIA re-

quest that is the subject of this suit.

3. I had been entirely unaware that this release was pending.

4. In a telephone conversation with me, EPA's counsel trial counsel, Abraham Simmons, stated that he was similarly unaware that this release was pending.

5. Based on counsels' initial review of the EPA's cover letter and a declaration of a Luminant employee, it appears that this release constitutes 183 pdf files totaling approximately 6,000 pages of material.

6. Based on counsels' initial review of the EPA's cover letter and a declaration of a Luminant employee, it appears that the information in at least some of these documents is responsive to claims and defenses asserted by the Parties in this case.

7. The Parties require a brief period to evaluate the contents of the recently released records and Plaintiffs require time in which to evaluate their relevance to arguments to be presented in their summary judgment reply.

8. This is the Parties' first joint request for an enlargement of time in which to brief summary judgment in this case.

9. This request for enlargement is made in good faith and for no improper purpose.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 1st day of May, 2012, in Eugene, Oregon.

s/ David Bahr

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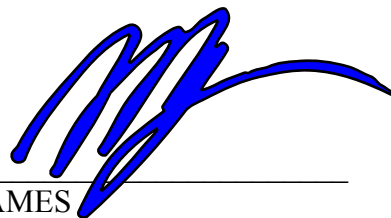
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~~PROPOSED~~ ORDER

This Court, having considered the Parties' Joint Motion To Extend The Summary Judgment Reply Brief Deadline, and after considering the moving papers, arguments of counsel, and all other matters presented to the Court, HEREBY FINDS AND ORDERS THAT:

Plaintiffs' summary judgment reply brief shall be due no later than May 4, 2012., **by Noon.**

IT IS SO ORDERED, this 1st day of May, 2012.



MARIA-ELENA JAMES
Chief United States Magistrate Judge

Presented by:

s/ David Bahr
David Bahr (Oregon Bar No. 901990)
Plaintiffs' counsel

s/ Abraham A. Simmons
ABRAHAM A. SIMMONS
Assistant United States Attorney
Attorney for the Federal Defendants